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LEONARDO ELECTRONIC ALMANAC

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What is the relationship between contemporary digital media and contemporary society? Is it possible to affirm that digital media are without sin and exist purely in a complex socio-political and economic context within which the users bring with them their ethical and cultural complexities? This issue, through a range of scholarly writings, analyzes the problems of ethics and sin within contemporary digital media frameworks.



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LEONARDO ELECTRONIC ALMANAC, VOLUME 19 ISSUE 4

Without Sin: Freedom and Taboo in Digital Media

VOLUME EDITORS

LANFRANCO ACETI & DONNA LEISHMAN

EDITORIAL MANAGERS

SHEENA CALVERT & ÖZDEN ŞAHİN

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Leonardo Electronic Almanac

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NSA: No Speaking Aloud, Anonymous, 2013.



Post-Society: Data Capture and Erasure One Click at a Time

"Oh, in the name of God! Now I know what it feels like to be God!"

Frankenstein (1931)

They must have felt like gods at the NSA when they discovered that they were able to spy on anyone. What feels ridiculous to someone that works with digital media is the level of ignorance that people continue to have about how much everyone else knows or can know about 'you.' If only people were willing to pay someone, or to spend a bit of time searching through digital data services themselves, they would discover a range of services that have started to commercialize collective data: bought and sold through a range of semi-public businesses and almost privatized governmental agencies. Public records of infractions and crimes are available for 'you' to know what 'your' neighbor has been up to. These deals, if not outright illegal, are characterized by unsolved ethical issues since they are a 'selling' of state documents that were never supposed to be so easily accessible to a global audience.

Concurrently as I write this introduction, I read that the maddened Angela Merkel is profoundly shocked that her mobile phone has been tapped into – this is naive at best but also deeply concerning: since to not understand what has happened politically and technologically in the 21st century one must have been living on the moon. Perhaps it is an act or a pantomime staged for the benefit of those 'common' people that need to continue living with the strong

belief or faith that their lives are in good hands, that of the state.

Nevertheless it speaks of a 'madness' of the politician as a category. A madness characterized by an alienation from the rest of society that takes the form of isolation. This isolation is, in Foucauldian terms, none other than the enforcement of a voluntary seclusion in the prison and the mad house.

The prisons within which the military, corporate, financial and political worlds have shut themselves in speak increasingly of paranoia and fear. As such the voluntary prison within which they have sought refuge speaks more and more the confused language that one may have imagined to hear from the *Stultifera Navis*.

Paranoia, narcissism and omnipotence, all belong to the delirium of the sociopaths, ¹ who push towards the horizon, following the trajectory set by the 'deranged minds.'

It is for the other world that the madman sets sail in his fools' boat; it is from the other world that he comes when he disembarks. ²

This otherworldliness – this being an alien from another world – has increasingly become the characteristic of contemporary political discourse, which, detached from the reality of the 'majority' of people, feeds into the godlike complex. Foolishness and lunacy reinforce this perspective, creating a rationale that drives the

Stultifera Navis towards its destiny inexorably, bringing all others with them.

Having segregated themselves in a prison of their own doing, the politicians look at all others as being part of a large mad house. It is from the upper deck of a gilded prison that politicians stir the masses in the lower decks into a frenzy of fear and obedience.

Why should it be in this discourse, whose forms we have seen to be so faithful to the rules of reason, that we find all those signs which will most manifestly declare the very absence of reason? ³

Discourses, and in particular political discourses, no longer mask the reality of madness and with it the feeling of having become omnipotent talks of human madness in its attempt to acquire the impossible: that of being not just godlike, but God.

As omnipotent and omniscient gods the NSA should allow the state to 'see.' The reality is that the 'hands' of the state are no longer functional and have been substituted with prostheses wirelessly controlled by the sociopaths of globalized corporations. The amputation of the hands happened while the state itself was merely looking somewhere else, too blissfully busy counting the money that was flowing through neo-capitalistic financial dreams of renewed prosperity and Napoleonic grandeur.

The madness is also in the discourse about data, deprived of ethical concerns and rooted within perceptions of both post-democracy and post-state. So much so that we could speak of a post-data society, within which the current post-societal existence is the consequence of profound changes and alterations to an ideal way of living that technology – as its greatest sin – still presents as participatory and horizontal but not as plutocratic and hierarchical.

In order to discuss the present post-societal condition, one would need first to analyze the cultural disregard that people have, or perhaps have acquired, for their personal data and the increasing lack of participation in the alteration of the frameworks set for post-data.

This disregard for personal data is part of cultural forms of concession and contracting that are determined and shaped not by rights but through the mass loss of a few rights in exchange for a) participation in a product as early adopters (Google), b) for design status and appearance (Apple), c) social conventions and entertainment (Facebook) and (Twitter).

Big data offers an insight into the problem of big losses if a catastrophe, accidental or intentional, should ever strike big databases. The right of ownership of the 'real object' that existed in the data-cloud will become the new arena of post-data conflict. In this context of loss, if the crisis of the big banks has demonstrated anything, citizens will bear the brunt of the losses that will be spread iniquitously through 'everyone else.'

The problem is therefore characterized by multiple levels of complexity that can overall be referred to as a general problem of ethics of data, interpreted as the ethical collection and usage of massive amounts of data. Also the ethical issues of post-data and their technologies has to be linked to a psychological understanding of the role that individuals play within society, both singularly and collectively through the use of media that engender new behavioral social systems through the access and usage of big data as sources of information.

Both Prof. Johnny Golding and Prof. Richard Gere present in this collection of essays two perspectives that, by looking at taboos and the sinful nature of technology, demand from the reader a reflection on

the role that ethics plays or no longer plays within contemporary mediated societies.

Concepts of technological neutrality as well as economic neutrality have become enforced taboos when the experiential understanding is that tools that possess a degree of danger should be handled with a modicum of self-control and restraint.

The merging of economic and technological neutrality has generated corporate giants that have acquired a global stronghold on people's digital data. In the construction of arguments in favor or against a modicum of control for these economic and technological giants, the state and its political representatives have thus far considered it convenient not to side with the libertarian argument, since the control was being exercised on the citizen; a category to which politicians and corporate tycoons and other plutocrats and higher managers believe they do not belong to or want to be reduced to.

The problem is then not so much that the German citizens, or the rest of the world, were spied on. The taboo that has been infringed is that Angela Merkel, a head of state, was spied on. This implies an unwillingly democratic reduction from the NSA of all heads of state to 'normal citizens.' The disruption and the violated taboo is that all people are data in a horizontal structure that does not admit hierarchical distinctions and discriminations. In this sense perhaps digital data are violating the last taboo: anyone can be spied upon, creating a truly democratic society of surveillance.

The construction of digital data is such that there is not a normal, a superior, a better or a worse, but everything and everyone is reduced to data. That includes Angela Merkel and any other head of state. Suddenly the process of spying represents a welcome reduction to a basic common denominator: there is no

difference between a German head of state or a blue collar worker; the NSA can spy on both and digital data are collected on both.

If anything was achieved by the NSA it was an egalitarian treatment of all of those who can be spied upon: a horizontal democratic system of spying that does not fear class, political status or money. This is perhaps the best enactment of American egalitarianism: we spy upon all equally and fully with no discrimination based on race, religion, social status, political affiliation or sexual orientation.

But the term spying does not quite manifest the profound level of Panopticon within which we happen to have chosen to live, by giving up and squandering inherited democratic liberties one right at a time, through one agreement at a time, with one click at a time.

These are some of the contemporary issues that this new LEA volume addresses, presenting a series of writings and perspectives from a variety of scholarly fields.

This LEA volume is the result of a collaboration with Dr. Donna Leishman and presents a varied number of perspectives on the infringement of taboos within contemporary digital media.

This issue features a new logo on its cover, that of New York University, Steinhardt School of Culture, Education, and Human Development.

My thanks to Prof. Robert Rowe, Professor of Music and Music Education; Associate Dean of Research and Doctoral Studies at NYU, for his work in establishing this collaboration with LEA.

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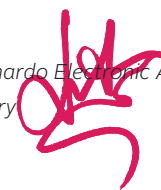
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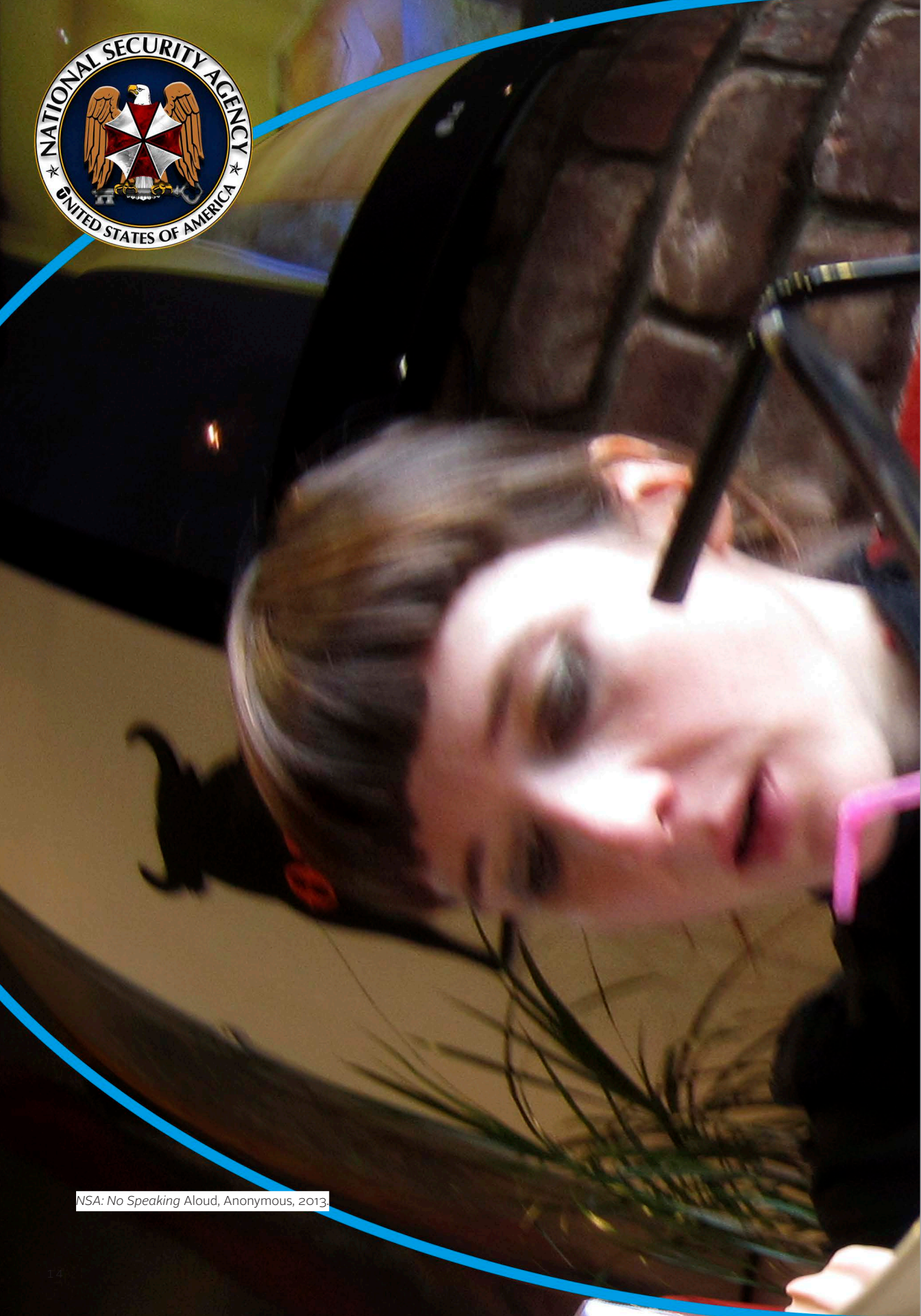
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Lanfranco Aceti

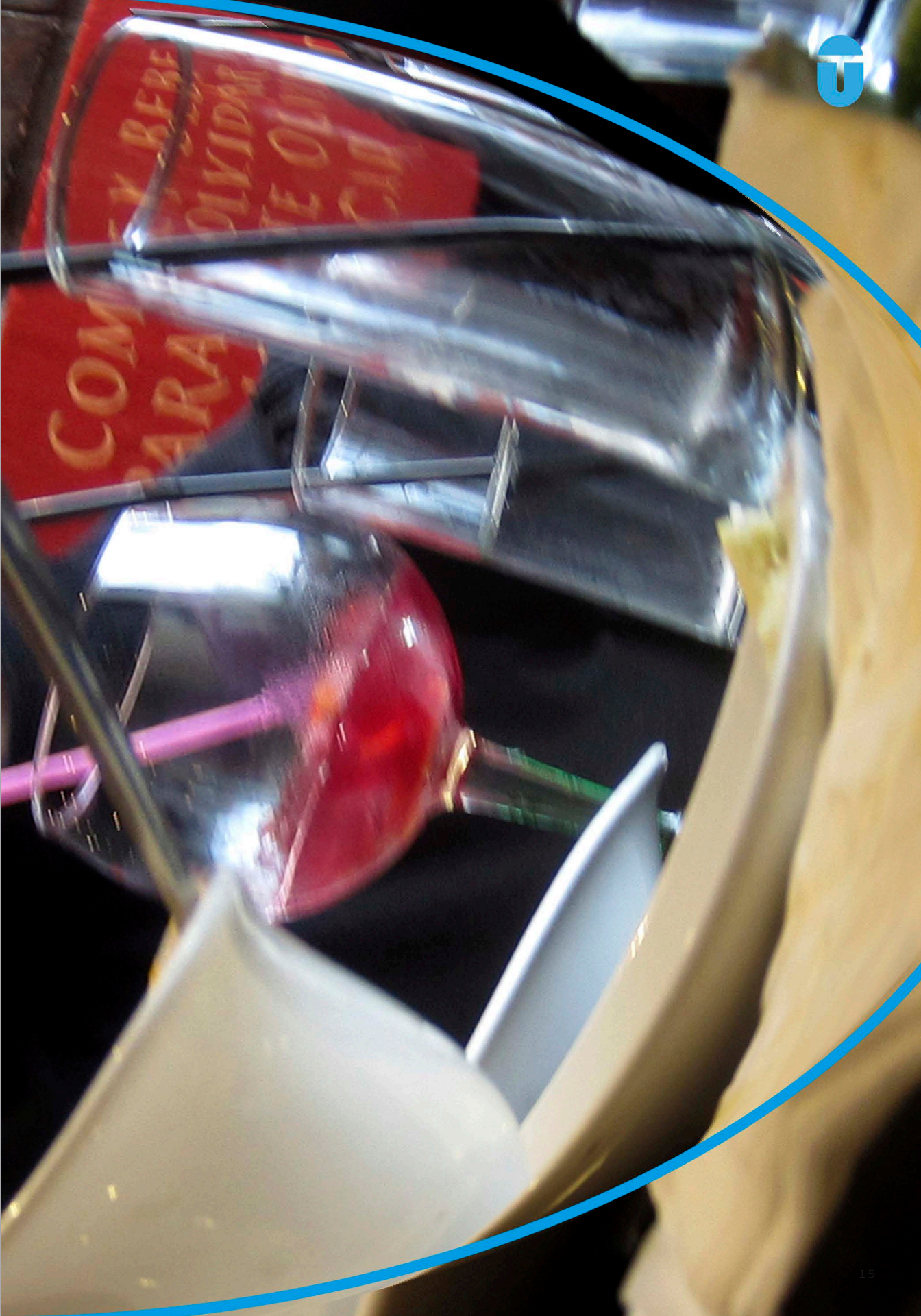
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1. Clive R. Boddy, "The Corporate Psychopaths Theory of the Global Financial Crisis," *Journal of Business Ethics* 102, no. 2 (2011): 255.
2. Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. Richard Howard (London: Routledge, 2001), 11.
3. Ibid., 101.



NSA: No Speaking Aloud, Anonymous, 2013.



Without Sin: Freedom and Taboo in Digital Media

INTRODUCTION

"Without Sin: Freedom and Taboo in Digital Media" is both the title of this special edition and the title of a panel that was held at ISEA 2011. The goal of the panel was to explore the disinhibited mind's ability to exercise freedom, act on desires and explore the taboo whilst also surveying the boarder question of the moral economy of human activity and how this is translates (or not) within digital media. The original panelists (some of whom have contributed to the this edition) helped to further delineate additional issues surrounding identity, ethics, human socialization and the need to better capture/understand/perceive how we are being affected by our technologies (for good or bad).

In the call for participation, I offered the view that contemporary social technologies are continuously changing our practical reality, a reality where human experience and technical artifacts have become beyond intertwined, but for many interwoven, inseparable – if this were to be true then type of cognizance (legal and personal) do we need to develop? Implied in this call is the need for both a better awareness and jurisdiction of these emergent issues. Whilst this edition is not (and could not be) a unified survey of human activity and digital media; the final edition contains 17 multidisciplinary papers spanning Law, Curation, Pedagogy, Choreography, Art History, Political Science, Creative Practice and Critical Theory – the volume attempts to illustrate the complexity of the situation and if possible the kinship between pertinent disciplines.

Human relationships are rich and they're messy and they're demanding. And we clean them up with technology. Texting, email, posting, all of these things let us present the self, as we want to be. We get to edit, and that means we get to delete, and that means we get to retouch, the face, the voice, the flesh, the body – not too little, not too much, just right. ¹

Sherry Turkle's current hypothesis is that technology has introduced mechanisms that bypass traditional concepts of both community and identity indeed that we are facing (and some of us are struggling with) an array of reconceptualizations. Zygmunt Bauman in his essay "From Pilgrim to Tourist – or a Short History of Identity" suggests that:

One thinks of identity whenever one is not sure if where one belongs; that is, one is not sure how to place oneself among the evident variety of behavioral styles and patterns, and how to make sure that people would accept this placement as right and proper, so that both sides would know how to go on in each other's presence. 'Identity' is the name given to the escape sought from that uncertainty. ²

Our 'post-social' context where increased communication, travel and migration bought about by technological advances has only multiplied Bauman's conditions of uncertainty. Whilst there may be aesthetic tropes within social media, there is no universally accepted

authority within contemporary culture nor is there an easy mutual acceptance of what is 'right and proper' after all we could be engaging in different iterations of "backward presence" or "forward presence" ³ whilst interacting with human and non-human alike (see Simone O'Callaghan's contribution: "Seductive Technologies and Inadvertent Voyeurs" for a further exploration of presence and intimacy).

Editing such a broad set of responses required an editorial approach that both allowed full expansion of each paper's discourse whilst looking for interconnections (and oppositions) in attempt to distil some commonalties. This was achieved by mentally placing citation, speculation and proposition between one another. Spilling the 'meaning' of the individual contributions into proximate conceptual spaces inhabited by other papers and looking for issues that overlapped or resonated allowed me formulate a sense of what might become future pertinent themes, and what now follows below are the notes from this process.

What Social Contract?

Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man. (Thomas Hobbes in chapter XIII of the *Leviathan* ⁴)

Deborah Swack's "FEELTRACE and the Emotions (after Charles Darwin)," Johnny Golding's "Ana-Materialism & The Pineal Eye: Becoming Mouth-Breast" and Kriss Ravetto's "Anonymous Social As Political" argue that our perception of political authority is somewhere between shaky towards becoming erased altogether. Whilst the original 17th century rational for sublimating to a political authority – i.e. we'd default back to a war like state in the absence of a binding social contract – seems like a overwrought fear, the capacity for repugnant anti-social behavior as a consequence of no longer being in awe of any common power is real and increasingly impactful. ⁵ Problematically the notion of a government that has been created by individuals to protect themselves from one

another sadly seems hopelessly incongruent in today's increasingly skeptical context. Co-joined to the dissipation of perceptible political entities – the power dynamics of being 'good' rather than 'bad' and or 'sinful' appears to be one of most flimsy of our prior social borders. The new reality that allows us to transgress and explore our tastes and predictions from a remote and often depersonalized position feels safer (i.e. with less personal accountability) a scenario that is a further exacerbated space vacated by the historic role of the church as a civic authority. Mikhail Pushkin in his paper "Do we need morality anymore?" explores the online moral value system and how this ties into the deleterious effect of the sensationalism in traditional mass media. He suggests that the absence of restrictive online social structure means the very consciousness of sin and guilt has now changed and potentially so has our capability of experiencing the emotions tied to guilt. ⁶ Sandra Wilson and Lila Gomez in their paper "The Premediation of Identity Management in Art & Design – New Model Cyborgs – Organic & Digital" concur stating that "the line dividing taboos from desires is often blurred, and a taboo can quickly flip into a desire, if the conditions under which that interaction take place change."

The Free?

The issue of freedom seems to be where much of the debate continues – between what constitutes false liberty and real freedoms. Unique in their own approach Golding's and Pushkin's papers challenge the premise that is implied in this edition's title – that 'Freedom and Taboo' even have a place at all in our contemporary existence as our established codes of morality (and ethics) have been radically reconfigured. This stance made me recall Hobbes's first treaty where he argued that "commodious living" (i.e. morality, politics, society), are purely conventional and that moral terms are not objective states of affairs but are reflections of tastes and preferences – indeed within another of his key concepts (i.e. the "State of Nature") 'anything goes' as nothing is immoral and or unjust. ⁷ It would 'appear' that we are freer from traditional institutional controls whilst at the same time one could argue that the borders of contiguous social forms (i.e.

procedures, networks, our relationship to objects and things) seem to have dissipated alongside our capacity to perceive them. The problematic lack of an established conventional commodious living such as Bauman's idea that something is 'right and proper' is under challenge by the individualized complexity thrown up from our disinhibited minds, which can result in benign or toxic or 'other' behaviors depending on our personality's variables.⁷ Ravetto describes how Anonymous consciously inhabits such an 'other' space:

Anonymous demonstrates how the common cannot take on an ethical or coherent political message. It can only produce a heterogeneity of spontaneous actions, contradictory messages, and embrace its contradictions, its act of vigilante justice as much as its dark, racist, sexist, homophobic and predatory qualities.

Perception

Traditionally good cognition of identity/society/relationships (networks and procedures) was achieved through a mix of social conditioning and astute mindfulness. On the other hand at present the dissipation of contiguous social forms has problematized the whole process creating multiple social situations (new and prior) and rather than a semi-stable situation (to reflect upon) we are faced with a digital deluge of unverifiable information. Perception and memory comes up in David R. Burns's paper "Media, Memory, and Representation in the Digital Age: Rebirth" where he looks at the problematic role of digital mediation in his personal experience of the 9/11. He recalls the discombobulating feeling of being: "part of the digital media being internationally broadcast across the world." Burns seeks to highlight the media's influence over an individual's constructed memories. From a different perspective Charlie Gere reminds us of the prominence (and shortcomings) of our ocular-centric perspective in his discussion of "Alterity, Pornography,

and the Divine" and cites Martin Jay's essay "Scopic Regimes of Modernity"⁸ which in turn explores a variety of significant core concepts of modernity where vision and knowledge meet and influence one another. Gere/Jay's line of references resurrect for the reader Michel Foucault's notion of the "Panopticon" (where surveillance is diffused as a principle of social organization),⁹ Guy DeDord's *The Society of the Spectacle* i.e. "All that once was directly lived has become mere representation")¹⁰ and Richard Rorty's *Philosophy and the Mirror of Nature* (published in 1979).¹¹ The latter gave form to an enduringly relevant question: are we overly reliant on a representational theory of perception? And how does this intersect with the risks associated with solipsistic introjection within non face-to-face online interactions? The ethics of 'looking' and data collection is also a feature of Deborah Burns's paper "Differential Surveillance of Students: Surveillance/Sousveillance Art as Opportunities for Reform" in which Burns asks questions of the higher education system and its complicity in the further erosion of student privacy. Burn's interest in accountability bridges us back to Foucault's idea of panoptic diffusion:

*He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power; he makes them play spontaneously upon himself; he inscribes in himself the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection*¹²

In panoptic diffusion the knowingness of the subject is key – as we move towards naturalization of surveillance and data capture through mass digitization such power relationships change. This is a concern mirrored by Eric Schmidt Google's Executive Chairman when considering the reach of our digital footprints: "I don't believe society understands what happens when everything is available, knowable and recorded

by everyone all the time."¹³ Smita Kheria's "Copyright and Digital Art practice: The 'Schizophrenic' Position of the Digital Artist" and Alana Kushnir's "When Curating Meets Piracy: Rehashing the History of Unauthorised Exhibition-Making" explore accountability and power relationships in different loci whilst looking at the mitigation of creative appropriation and reuse. It is clear that in this area serious reconfigurations have occurred and that new paradigms of acceptability (often counter to the legal reality) are at play.

Bauman's belief that "One thinks of identity whenever one is not sure if where one belongs"¹⁴ maybe a clue into why social media have become such an integral part of modern society. It is after all an activity that privileges 'looking' and objectifying without the recipient's direct engagement – a new power relationship quite displaced from traditional (identity affirming) social interactions. In this context of social media over dependency it may be timely to reconsider Guy-Ernest Debord's 'thesis 30':

*The externality of the spectacle in relation to the active man appears in the fact that his own gestures are no longer his but those of another who represents them to him. This is why the spectator feels at home nowhere, because the spectacle is everywhere.*¹⁵

Underneath these issues of perception / presence / identity / is a change or at least a blurring in our political (and personal) agency. Don Ritter's paper "Content Osmosis and the Political Economy of Social Media" functions as a reminder of the historical precedents and continued subterfuges that occur in mediated feelings of empowerment. Whilst Brigit Bachler in her paper "Like Reality" presents to the reader that "besides reality television formats, social networking sites such as Facebook have successfully delivered a new form of watching each other, in a seemingly safe

setting, on a screen at home" and that "the appeal of the real becomes the promise of access to the reality of manipulation."¹⁶ The notion of better access to the 'untruth' of things also appears in Ravetto's paper "Anonymous: Social as Political" where she argues that "secrecy and openness are in fact aporias." What is unclear is that, as society maintains its voyeuristic bent and the spectacle is being conflated into the banality of social media, are we becoming occluded from meaningful developmental human interactions? If so, we are to re-create a sense of agency in a process challenged (or already transformed) by clever implicit back-end data gathering¹⁷ and an unknown/undeclared use our data's mined 'self.' Then, and only then, dissociative anonymity may become one strategy that allows us to be more independent; to be willed enough to see the world from our own distinctive needs whilst devising our own extensions to the long genealogy of moral concepts.

Somewhere / Someplace

Perpetual evolution and sustained emergence is one of the other interconnecting threads found within the edition. Many of the authors recognize a requirement for fluidity as a reaction to the pace of change. Geographer David Harvey uses the term "space-time compression" to refer to "processes that . . . revolutionize the objective qualities of space and time."¹⁸ Indeed there seems to be consensus in the edition that we are 'in' an accelerated existence and a concomitant dissolution of traditional spatial co-ordinates – Swack cites Joanna Zylinka's 'human being' to a perpetual "human becoming"¹⁹ whilst Golding in her paper reminds us that Hobbes also asserted that "[f]or seeing life is but a motion of Limbs"²⁰ and that motion, comes from motion and is inextricably linked to the development and right of the individual. But Golding expands this changing of state further and argues where repetition (and loop) exist so does a different experience:

The usual culprits of time and space (or time as distinct from space and vice versa), along with identity, meaning, Existenz, Being, reconfigure via a relational morphogenesis of velocity, mass, and intensity. This is an immanent surface cohesion, the compelling into a 'this' or a 'here' or a 'now,' a space-time terrain, a collapse and rearticulation of the tick-tick-ticking of distance, movement, speed, born through the repetitive but relative enfolding of otherness, symmetry and diversion.

Golding's is a bewildering proposition requiring a frame of mind traditionally fostered by theoretical physicists but one that may aptly summarize the nature of the quandary. The authors contributing to this edition all exist in their own ways in a post-digital environment, anthropologist Lucy Suchman describes this environment as being "the view from nowhere, detached intimacy, and located accountability."²¹ Wilson and Gomez further offer a possible coping strategy by exploring the usefulness of Jay Bolter and Richard Grusin's "pre-mediation" as a means to externalize a host of fears and reduce negative emotions in the face of uncertainty. The imperative to create some strategies to make sense of some of these pressing issues is something that I explore in my own contribution in which I offer the new term *Precarious Design* – as a category of contemporary practice that is emerging from the design community. Precarious Design encompasses a set of practices that by expressing current and near future scenarios are well positioned to probe deeper and tease out important underlying societal assumptions to attain understanding or control in our context of sustained cultural and technological change.

Embodiment

In theory our deterritorialized and changed relationship with our materiality provides a new context in which a disinhibited mind could better act on desires

and explore the taboo. Ken Hollings's paper "THERE MUST BE SOMETHING WRONG WITH THIS, SALLY... Faults, lapses and imperfections in the sex life of machines" – presents a compelling survey of the early origin of when humans began to objectify and try live through our machines starting with disembodiment of voice as self that arose from the recording of sound via the Edison phonograph in 1876. Golding and Swack mull over the implications of the digital on embodiment and what it means now to be 'human' as we veer away from biological truth and associated moral values towards something else. Sue Hawksley's "Dancing on the Head of a Sin: touch, dance and taboo" reminds us of our sensorial basis in which:

Touch is generally the least shared, or acknowledged, and the most taboo of the senses. Haptic and touch-screen technologies are becoming ubiquitous, but although this makes touch more commonly experienced or shared, it is often reframed through the virtual, while inter-personal touch still tends to remain sexualized, militarized or medicalized (in most Western cultures at least).

Within her paper Hawksley provides an argument (and example) on how the mediation of one taboo – dance – through another – touch – could mitigate the perceived moral dangers and usual frames of social responsibility. Swack raises bioethical questions about the future nature of life for humans and "the embodiment and containment of the self and its symbiotic integration and enhancement with technology and machines." Whilst Wilson and Gomez's go on to discuss *Bioprescence* by Shiho Fukuhara and Georg Tremmel – a project that provocatively "creates Human DNA trees by transcoding the essence of a human being within the DNA of a tree in order to create 'Living Memorials' or 'Transgenic Tombstones'"²² – as an example of a manifest situation that still yields a (rare) feeling of transgression into the taboo.

CONCLUSION

In the interstices of this edition there are some questions/observations that remain somewhat unanswered and others that are nascent in their formation. They are listed below as a last comment and as a gateway to further considerations.

Does freedom from traditional hierarchy equate to empowerment when structures and social boundaries are also massively variable and dispersed and are pervasive to the point of incomprehension/invalidation? Or is there some salve to be found in Foucault's line that "'Power is everywhere' and 'comes from everywhere' so in this sense is neither an agency nor a structure,"²³ thus nothing is actually being 'lost' in our current context? And is it possible that power has always resided within the individual and we only need to readjust to this autonomy?

Conventional political power (and their panoptic strategies) seem to be stalling, as efforts to resist and subvert deep-seated and long-held governmental secrecy over military/intelligence activities have gained increased momentum while their once privileged data joins in the leaky soft membrane that is the ethics of sharing digitally stored information.

Through dissociative strategies like online anonymity comes power re-balance, potentially giving the individual better recourse to contest unjust actions/laws but what happens when we have no meaningful social contract to direct our civility? It seems pertinent to explore if we may be in need of a new social contract that reconnects or reconfigures the idea of accountability – indeed it was interesting to see the contrast between Suchman's observed 'lack of accountability' and the Anonymous collective agenda of holding (often political or corporate) hypocrites 'accountable' through punitive measures such as Denial-of-Service attacks.

Regarding de-contextualization of the image / identity – there seems to be something worth bracing oneself against in the free-fall of taxonomies, how we see, how we relate, how we perceive, how we understand that even the surface of things has changed and could still be changing. There is no longer a floating signifier but potentially an abandoned sign in a cloud of dissipating (or endlessly shifting) signification. Where once:

*The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the 'social-worker'-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements.*²⁴

There now is no culturally specific normal in the diffuse digital-physical continuum, which makes the materiality and durability of truth very tenuous indeed; a scenario that judges-teaches-social workers are having some difficulty in addressing and responding to in a timely manner, an activity that the theoretically speculative and methodologically informed research as contained within this edition can hopefully help them with.

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COPYRIGHT AND DIGITAL ART PRACTICE

The 'Schizophrenic' Position of the Digital Artist

by

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INTRODUCTION

In the last two decades, advancements in both digital technologies and information and communications systems have brought about changes that have had a profound affect on the production, dissemination, exploitation, and consumption of creative output. These changes have posed considerable challenges, both conceptual and practical, to copyright law, and have led to the latest set of copyright wars. ¹ As a result, the role of copyright, as a regulatory framework that governs creative activities, has received considerable scrutiny. On-going discussions in the United Kingdom concerning the adaptation of the copyright framework to these challenges have taken place in the context of assessing the role of Intellectual Property in economic growth and innovation in the 'knowledge economy.' For instance, doubts have been raised about the extent to which exploitation of copyright under traditional business models can continue to be efficient and workable and the exploration of innovative business models have found particular favour. ² Overall, the importance of these various challenges is reflected in the numerous policy discussions and initiatives we have seen in recent years. ³

ABSTRACT

What is the role of copyright in the everyday social context of new, emerging and 'born digital' artistic activities? Is copyright able to govern the practical behaviour of artists and creative practitioners? If not, then what or who impacts on their behaviour? This paper focuses on the interaction of copyright with the everyday life of creators working in the digital environment and discusses their 'schizophrenic' position. It draws upon a qualitative empirical study with digital artists aimed at exploring their perceptions of copyright law: how they understand and manage copyright and how copyright interacts with the local circumstances of their day to day creative practice. A finding of this study was that some of the artists faced moral dilemmas and were pulled in different directions with respect to their perspectives and decisions regarding copyright. The consequence of this was a seemingly 'schizophrenic' position, one that manifested in various ways – such as emphasize that 'copying' cannot and should not be controlled in the digital medium but equally feeling compelled to have some control. Other artists rejected the prevention of copying in the digital domain while relying on exclusivity of copies in the analogue domain and / or denied the applicability of traditional notions of authorship to their practice while asserting the importance of attribution.

Concurrently, advancements in the digital environment have had a profound impact upon creative practice; such that unprecedented opportunities for novel creation and representation of information have arisen. In addition, the dissemination and experience of such media creation (those without analogue equivalents) has been facilitated in a range of diverse contexts. The main beneficiaries of these opportunities ⁴ have been varied and include, amongst others, citizen journalists and bloggers, users of massively multiplayer online role-playing games, creators of remixes, mashups, and fan art, as well new media artists. What's more, advances in digital technologies have stretched the boundaries of creative practice and have challenged definitions of art. With respect to these develop-

ments we should perhaps ask: what is the impact of the digital environment on the role of copyright for different types of creativity? And especially, what is the role of copyright in the everyday social context of new, emerging and 'born digital' artistic activities? Is copyright able to govern the practical behaviour of artists and creative practitioners? If so, how do artists perceive the role of copyright or what do they desire it to be? If not, then who, or what, impacts on their behaviour?

Copyright law can affect the life of a creative work (and a creative practice) from 'start to finish': from the point of creation – since the work may, and usually does, use and build on third party copyright works in

a variety of ways, particularly in the digital environment; through to dissemination – the choice of licensing, type of license used; and exploitation – business model and routes used as well as types of protection asserted. Indeed, copyright law ‘is intended’ to affect all stages of creation, dissemination, and exploitation. All of the creators’ decisions are likely to be based on the information about copyright law that they may have, they believe they have, or do not have, and usually all of this without any recourse to specialist advice. Further, although most creators may never make legal claims or bring actions to enforce copyright law, or be subjected to them, the law has a perceived utility or hindrance and can have an actual impact on their practice and behaviour.

To understand whether copyright is able to govern the practical behaviour of artists and creative practitioners, an understanding of how copyright law trickles down and is played out in the day to day creative practice is key: how are the meanings and understandings of individual creators’ shaped in the evolving digital environment; what are creators’ motivations and reasons behind copyright related decisions; how do creators prioritize such motivations and meanings; what is their attitude to and experience of copyright; where and why is copyright resisted or seen as beneficial; and how the context and specificities of different types of creative activities affect these issues.

COPYRIGHT AND DIGITAL ART PRACTICE

A qualitative empirical study (hereafter, ‘the study’) was conducted with twenty-one digital artists based in the UK and Ireland.⁵ To gain an understanding of what copyright law meant in the local context of their creative practice (amongst others matters), original first-hand accounts of the artists’ perspectives were obtained using in-depth semi-structured interviews.

The study focussed on the creators’ own meanings, experiences and images of a law that is aimed to govern them and how this subjective interpretation shapes the contours of their practice. The study took a socio-legal approach and was carried out by employing grounded theory as the methodology to obtain, examine, and analyse the data.⁶ Open coding, axial coding, and selective coding, were applied to the gathered data. Constant comparison was also undertaken between data gathering, analysis, and formation of conceptual categories.⁷ These analytical tools served two purposes in the understanding the consequences of the interaction of copyright with digital artists’ practices. First, they facilitated an exploration of the discrepancies between copyright law and its aims on the one hand and ‘copyright in action’ in a creative practice on other. Second, they helped in identifying and accounting for the multiple elements and contextual factors that were found to play a prominent role in informing the artists’ decisions on creation, dissemination and exploitation in their creative practices: these are referred to here as ‘actors.’

The chosen premise for the study was ‘digital art’: it was understood to be “an umbrella for such a broad range of artistic works and practices that it does not describe one unified set of aesthetics”⁸ and also understood not to be “some discrete practice, separated from other art forms.”⁹ The focus of the study was limited to those manifestations of digital art that formed a prominent part of the practice of the artists interviewed for the research (hereafter, ‘interviewees’).¹⁰ Such forms of digital art were: digital writing,¹¹ internet art and nomadic works,¹² software art,¹³ digital installations and networked performance.¹⁴ The interviewees, both digital natives¹⁵ and digital immigrants,¹⁶ associated the creative process closely with the exploration of the various potentials brought about by digital technologies; including the technical capabilities as well as the cultural, politi-

cal and socio-economic context of the medium. There were only four female interviewees compared to seventeen male interviewees. Although many of the interviewees worked in collaborative projects on an ad hoc basis, two of the female interviewees worked in a permanent group with a male counterpart and there were also two male interviewees who similarly worked with a female counterpart. Both the age group and the years of practice¹⁷ amongst the interviewees showed a wide range. The majority of artists, that is thirteen, came from the 31-40 age bracket (interviewee nos. 3-15) while six artists were between 41-55 years (Interviewee nos.16-21) and only – two were under 30 (interviewee nos. 1-2).¹⁸ Twelve artists had between 8 – 15 years of practice; six artists had up to eight years of practice; and – three artists had from fifteen to over twenty-five years of practice.

The interviewees included leading and well known artists whose works have been displayed internationally, (and apart from on their own personal or standalone websites) in venues such as Museum of Modern Art SF, Tate Britain & Tate Modern London, ZKM Centre Karlsruhe, Irish Museum of Contemporary Art Dublin, Digital Art Museum Berlin, Centre de Georges Pompidou Paris, Trans-Media-Akademie Hellerau, Walker Art Centre Minneapolis, Museum of Contemporary Art Sydney; on dedicated online portals for digital art like Stunned.org, Turbulence.org, Soundtoys.net; and international festivals either dedicated to or including new media like Siggraph, Split, FILE, CYNETart, Cybersonica, Intermediale, Transmediale. Some of their works had also been written about in books on development of digital art.

Additionally, the role and influence of academic institutions in supporting the production of digital art¹⁹ was also clearly reflected in the connection of the majority of interviewees with higher educational institutions, and in particular, their affiliations with relevant

research centres located therein. Seventeen interviewees, along with having an independent art practice, were associated with an academic department of a British or Irish higher education institution; in different capacities ranging from doctoral candidates, research fellows and artists in residence, to visiting lecturers, lecturers, professors, directors and heads of units in either a part-time or a full-time capacity. Only two interviewees (interviewee 12 and 18) had no association or affiliation with any institution or organization at the time of interviewing although both of them had previously been associated with academia. The remaining two interviewees (interviewee 21 and 14), while also maintaining an independent art practice, were involved, respectively, in the entertainment side of the creative industries (at a production level) and with a government agency for the arts (at an administrative level).

The overall conclusion from the study was that both copyright law and policy did not sit easily with either the artistic aims of the interviewees nor their actual practice. The study helped in identifying several gaps, which illustrated how copyright law and policy were disabled in their everyday practice. For example, legislative requirements for copyright protection like categorization and fixation were both challenged by and ran counter to the very potentials of digital technologies that the interviewees found attractive. This resulted in the legal requirements for protection being not just inactive but also disenfranchised. Similarly, both the scope of economic rights and moral rights, as well exceptions and limitations under copyright law were found not to coalesce with the type and strength of protection and freedoms perceived to be necessary by the interviewees for their artistic practice. Over all, it showed that copyright was resisted and disabled at the stage of practical application in the interviewees’ practice.

Copyright law was not seen to have any independent ability to incentivize or indeed govern the interviewees' practice as an external influence. Instead, a range of 'actors' were found to contribute to decision-making and norm-setting in the interviewees' practices. The associations and interactions of these actors resulted in the interviewees' practices being regulated with little recourse to formal rules of copyright. While 'copyright protection' was one of such actors that could play a part in informing creators in their decisions on creation, dissemination and exploitation of their works, various other 'actors' were found to play a much more prominent role. Some of these 'actors' were: their attraction to the potentials and inherent capabilities of the digital medium, their understandings and meanings of the 'digital,' their political and ethical stance, contemporary art practices and philosophy, their academic and research backgrounds, strong intrinsic motivations, lack of knowledge of the law as well as their legal consciousness.

For instance, there was an obvious association between many artists' creative practice and the development of computing technologies. But the interviewees' reasons for adopting digital technologies in their practice demonstrated a close connection between their creative process and an exploration of the potentialities of digital technologies. This included both the exploitation of aspects found only in the digital domain, particularly those that facilitated the application of techniques that were without an analogue equivalent – for instance its generative capability, flexibility, the ability to combine multiple media, appropriation and manipulation of data in real time, and a capacity for variable levels of user interactivity and the ability to expand on individual artists' earlier creative disciplines and practices (in particular, where it allowed the extension of conceptual or formal practice in the tradition of contemporary art via the context and meanings afforded by digital technologies).

Strong intrinsic motivations also played an important role in shaping their practice. The interviewees communicated that the motivation behind their creative practice was not financial gain and emphasis was placed upon the belief that it was certainly not a precondition for them to have and continue their art practice. Instead, they believed that their personal motivations of simply wanting to be involved in, and remain involved in, the creative process (for reasons such as personal interest, enjoyment, 'a compulsion to create') was the driving force behind their practice. They also emphasised that while they were not motivated by reason of financial reward, they viewed finance and economic considerations as more of a requirement or necessity in "being able to run the show." The interviewees' 'business models,' or perhaps more appropriately 'sustenance' models (as described and preferred by many interviewees), demonstrated that their art works developed, spread, and propagated, in different, usually organic and fluid ways, and that there was not any 'one model' or 'just one way of doing it' yet.

In general, the interviewees lacked accurate knowledge of copyright law, and also appeared to lament this. For instance, some interviewees had very limited legal knowledge as to how copyright applies and functions for licensing purposes (e.g. sometimes they were giving effect to their intention to share their works openly based on a misunderstanding of how law works). On the other hand, they held very strong opinions on copyright which displayed a general disenchantment with the purpose of copyright, as well as suspicion of copyright law. Their subjective perceptions and interpretations of the law were found to have been shaped by the popular discourse on copyright provided in the news and other media to which the interviewees were 'clued-in' to: copyright was perceived to be useful only for those who can afford to protect it; the duration of copyright was used as another example by some interviewees to make the

point that copyright legislation reflected corporate interests more than individual artist's interests; and, the enforcement of copyright by corporations and the recent push for stronger laws as well as legal enforcement of copyright in the digital domain was also highlighted to show copyright's incompatibility with artists' interests. The lack of knowledge of the law in conjunction with their legal consciousness²⁰ pointed to copyright policy having little over all legitimacy for them. They were equally influential in determining their desire and necessity for copyright protection in their own practice and any strategies they adopted.

THE 'SCHIZOPHRENIC' POSITION OF THE DIGITAL ARTIST

It was noted above that the associations and interactions of the range of 'actors' that were found to contribute to decision-making and norm-setting resulted in the interviewees' practices being regulated with little recourse to formal rules of copyright. At the same time, these 'actors,' occasionally also served to pull the interviewees in different directions with respect to their perspectives and decisions regarding copyright. Some interviewees appeared to face certain moral dilemmas: on the one hand they wanted to question, resist, and dismiss the over all relevance and usefulness of copyright framework, but on the other, they relied upon, or wanted to rely upon, specific aspects of protection emanating from the copyright framework. The consequence of this for some is a seemingly 'schizophrenic' position, one that manifested in various ways: in wanting to emphasize that 'copying' cannot and should not be controlled in the digital medium but equally feeling compelled to have some control (so as to prevent copying when in line with their political or ideological beliefs); in wanting to reject the prevention of copying in the digital domain while relying on exclusivity of copies in the analogue domain; in wanting to

deny the applicability of traditional notions of authorship to their practice while asserting the importance of attribution.

To allay any likelihood of confusion here, in the context of this paper the term 'schizophrenic' is used metaphorically and relates to the fact that several interviewees used the term explicitly in describing the dualities they faced. The term is used as a reference to something that is characterized by inconsistent or contradictory elements or the coexistence of disparate or antagonistic elements. And more specifically here, experiencing or maintaining contradictory attitudes towards legal protection under copyright.

Good copy v Bad copy?

A clear theme found in the study was the lack of belief amongst the interviewees in the prevention of copying in the digital domain and interviewees were quick to assert 'copying' cannot and should not be controlled. The inherent nature of the digital medium was oft cited. Most interviewees reasoned that copy control is designed for the fixed media and controlling copying or re-use of their digital artworks or components thereof was difficult and even impossible.

For example, interviewee 4 with reference to copying mentioned that, "I don't think you can these days, it's out of your control, I think it's a good thing" while interviewee 17 mused "You know, you can't really know who's using anything, so in a sense no, I mean there's not much we can do." Interviewee 18 explained "You know people could be using your work all over and you wouldn't know about it... so you're unaware that's happening." Interviewee 2, who put a copyright notice on his website, explained the notice as, "I always kind of feel it means nothing because if someone's going to take it, they can take in the same way that I will."

In addition, the interviewees' whose own practice included appropriation, reconfiguration and building on others works, content and tools saw copying as healthy and necessary and part of an ethical bargain in the digital landscape, where artists could appropriate the pre-made cultural imagery belonging to third parties, just as others could appropriate parts of their work. Interviewee 18 pointed out:

In one way, you know, digital artists are quite often using other people's work anyway, rephrasing it so, I mean we want to be allowed to do that, so we don't want you know a copyrighted blanket that says you can't use anything, there's no fair use, you can't use anything that anyone else's created.

He continued that although one might not want their work to be used for derivative works, it is something one has to sacrifice. He reasoned:

to just let the work be free and to let people, to enable artists to use other people's work, as the basis of new work, which has always been done. I mean it's just, artists always have really to draw things but now it's digitally done, so the means of reproduction are different but I think that the purpose of it is the same, so I don't really think there's much role for digital protection. I think you have to acknowledge that you know people can use your work, if you're going to use other people's work and I think it's a much healthier way, it'll lead to more innovation, more creation and stuff, that's what it should be about.

Similarly interviewee 10 pointed out that, "I guess our soft approach is that information" and that "visual material and sound materials are important to be free."

Interviewee 17, with many years of practice, reasoned that:

I mean for artists working online, and particularly you know kind of the younger artists, pre-made imagery is in fact just as much part of the landscape as trees and you know streets. You know it's material which kind of constitutes the actual world of consciousness in which they live.

Interviewee 2, at an early stage of his career noted: "I use third party imagery and logos and icons and things like that within my work, I'd feel like at a certain level people should be allowed to take things from mine if they want, you know." With reference to images and sounds of other people, he continued: "I kind of see them as having equal value in the context of writing, they're kind of like an alphabet I use to kind of create my work, just like writing sentences with you know."

Even those interviewees who did not necessarily use or copy third party works, emphasised that their interests lied in sharing copies of their work and exploring how the audience and other artists have a dialogue with these materials. For example, interviewee 7 explained:

I think if you are an artist or a creative person there's one thing worse than somebody plagiarising your image is that they don't. You know it's always better for someone to be looking at your work, at least you know for it to be that current that people want to look at it. You know if it is being ignored, then that's definitely worse.

Similarly, interviewee 12 pointed out that, "it is also quite interesting to see your work crop in different and very odd places and contexts, and you think it's out there so it's been used and considered ... that it's a homage really and most of the people who'd see

that would actually know where it's come from." He thought that not stressing on one's economic rights can even raise an artist's profile. In his works, "it can even raise your profile or your public worth to be seen to be nonchalant about your work being re-used and in not being interested to restrain the same might even get you more success."

In similar vein, Interviewee 4 explained:

I like the idea that things are reusable and I've used other people's work in my work as well. I've come across a couple of years ago, some remakes of some of my stuff by.. which I didn't know about personally and felt that kind of looked cool. I mean that's obviously part of a constant interpretative kind of process, and that it's very common these days and I think that's healthy.

At the same time as wanting to emphasize that 'copying' is inevitable and uncontrollable and desirable in the digital medium, interviewees also felt compelled to want some control so as to prevent copying when it was not in line with their political or ideological beliefs: in particular, when their works may be used for certain types of commercial gain by certain types of actors that they did not approve of. For instance, some interviewees highlighted that 'use' by other artists would not "bother" them but 'use' in relation to advertising and promotional activities by large industries or corporations would be particularly problematic. For example, interviewee 8 mentioned with respect to someone copying or using their work: "so if it was, so if another artist did that I would be absolutely fine, I have no problem with that whatsoever. If a corporation did it then, no, I really don't see why they should be able to do that." Interviewee 2 pointed out that if his works had "been taken and used like really commercially to like promote a product or like a marketing campaign or something, I'd go crazy 'cause I hate that

kind of stuff, but if it was just an artist, I wouldn't care too much."

Interviewee 10's comments capture this dilemma that was faced by him and others:

Having said that we take a very open approach and mention it, it does me sick in my stomach when I see advertisers ripping off artists' work and knowing that there are people being just ripping off and not having to pay for it but whether I think laws would change that in an effective and useful way I am not so sure.

Digital copy v Physical Copy?

The belief that prevention of copying in the digital domain was not relevant to them was also mirrored in the interviewees' actual practice. Consequently, wide and free dissemination was not only a foundation for sustenance of their art practice in that it helped generate indirect opportunities or could raise an artist's profile or public worth, it was also the result of a strong sharing ethic which meant that dissemination for them was a continuous process which did not end with the artists becoming established or having gained a reputation. Most interviewees believed that they were not creating digital artworks with any expectation of exploiting such works through the assigning or licensing of exclusive rights in the work. Indeed, no interviewee described the funding of their practice mainly or solely from the exploitation of their digital art by sale or licensing of such works in digital form. For example, interviewee 9 referred to piracy through peer-to-peer platforms and said, "I mean, we would probably experience the same thing in visual art world if people like myself were trying to sell their online works or things like that. But we're not." Interviewee 2, described that he could not see how money could be made from copies of digital works. He noted how music files were being copied and guarding against that

was pointless as it went against the inherent nature of the medium.

Interviewee 15 who also taught at an art school and whose practice was with another artist as a team, described that:

We find that we are sort of, a little bit inhabiting the art market, a little bit inhabiting the kind of public sector, that's where you might trawl down a little bits of funding to making something from Arts Council or some sort of similar body or perhaps just an academic funding body. And then of course we just make stuff, ourselves, you know, we have a studio, we have a practice, we have things that we're interested in and we just make our work, so we're kind of very pluralistic in that kind of respect.

Indeed this was reflected generally in that the art practice of interviewees was neither strictly commercial nor strictly gallery nor strictly academic but each of those to some extent. The common theme was that their sustenance models were 'portfolio based': the interviewees were attempting to capture economic value and return which lay elsewhere than in the "digital copy." They saw the economic value in their works, for purposes of exploitation, to lie in an 'analogue edition' of their digital art work; or, their persons being attached to experiencing the work at the time of experience or performance of the work ^[21]; or other intangibles like, the idea itself, or in familiarity with the work; ^[22] or, their brand name, ^[23] brand value and reputation as artists; ^[24] or the practice of sharing and openness, and other skills like teaching and carrying out related activities.

However, in describing their decisions to sell or license exclusive analogue editions of digital art works alongside being reluctant to exploit or enforce copyright in the digital domain, some interviewees felt pulled in

different directions, interviewee 4 emphasised: "I've got this kind of a schizophrenic kind of situation here." He went on to describe that on the one hand he had signed up for licensing of some of his musical works, which were available through a physical product, through the Performing Right Society and was receiving royalties through them, and similarly, he would also "make sure everything is in the right place for his CD release," in terms of licences to be obtained and copyright to be asserted. But on the other hand, he wanted to be able to give away his other, what he described as, purely 'digital works' without asserting any protection in the digital domain because he did not see much point in controlling the digital copy nor care about copy protection there. Interviewee 8 also captures this duality in the following words:

I think, like a lot of people working in this area, I do have a real dilemma because if there was another economic model of artists working but we just haven't got one. So we keep flipping back between wanting the work to be free and then thinking I actually do need to make some money out of it.. Copyright law is the thing that protects us as artists but I think what artists are doing.. and it's not just artists .. we're as humans developing these new ways of working, then I think we have to articulate those ways of working more succinctly and then once we have that understanding of these new ways of working, we can see which aspects need protection.

The interviewees in the study did not perceive strong or strict enforcement of the right to copy in the digital domain to be necessary or crucial to their practice. Although some of the interviewees' views show a schizophrenic position, whereby they try and differentiate the protection they wanted according to the medium as well as the context in which the work may be copied or used, it also reflects a desire to work with

and adapt to the features of technology, to realize its full potential, as opposed to the law, which has been accused of remaining short sighted in its attempts to mirror the realities of the analogue medium in aiming to preserve the interests of a certain section of content owners and producers. This was also displayed in the interviewees' 'sustenance' models which displayed an attempt to think differently and not unquestionably or uncritically adopting standard routes for exploiting the exclusive rights provided under copyright law in their digital artworks.

CONCLUDING REMARKS

Interviewee 4:

It's the fact that it's changing so as such there is no kind of fixed, there is no established form, there is no established way in which it links with wider cultural aspects of society. It's ambiguous and it's kind of fluid so I guess that's why the expectations are varied, both from the point of view of the artist and the audience ..at the same time digital media is everywhere and now you're recording with this device and that's the kind of things that people relate to everyday, and I think it is almost the ethical responsibility of an artist to deconstruct all these things and to, to really eh look for meanings, look for alternative uses, to look for you know questions..

Artists have a history of experimenting, adopting, and incorporating both new and emerging technologies and reflecting and commenting on the technological, cultural, and social fabric of their time. ^[25] Contemporary art practices before the digital era had already raised questions concerning the legitimacy of the copyright framework and challenged notions of originality and authorship, and the scope of protection

under copyright law. ^[26] Digital art offers a premise that both advances and exaggerates these questions because it is comprised of elements that are part 'original' (the sort of originality that is exalted by copyright), and part 'remade' (the sort of use that is considered infringement under copyright). Perhaps the nature of digital art as a creative pursuit in the digital environment simply necessitates a position that is by its very nature 'schizophrenic.' Such a stance could be viewed as a necessary consequence of the situation said artists are faced with because it perhaps serves to accentuate the matter of artistic freedom one of the central concerns of creative practice for many.

Nevertheless, are there implications, if any, for the occasional manifestations of these schizophrenic positions? Can they shape our understanding of the regulation of intangibles? At the least, they may indicate that while interviewees were clearly not convinced that copyright was working for their (or other creators') benefit, they could not fully discount that it has the potential to do so. For the copyright system to support creativity, it requires the confidence of its stakeholders, in particular the creators who 'must see it as *appropriate, effective, fair, and reasonable*.' ^[27] The contested nature of copyright is often reflected in the fact that creators, and indeed other stakeholders, may not only lack accurate knowledge of copyright law, but they may also have strongly held opinions on copyright more generally. One of the challenges for copyright policy making in this context is to not just increase awareness of and access for the users of system, but to also ensure that it retains the faith of those whom it primarily claims to benefit. ■

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REFERENCES AND NOTES

1. See William Patry, *Moral Panics and the Copyright Wars* (Oxford: Oxford University Press, 2009).

2. See Ian Hargreaves, *Digital Opportunity: A Review of Intellectual Property and Growth*, Intellectual Property Office, May 2011, <http://www.ipo.gov.uk/ipreview-finalreport.pdf> (accessed September 28, 2013). See also: (c) *the Way Ahead*; Department for Business Innovation & Skills, (October, 2009) <http://www.ipo.gov.uk/c-strategy-digitalage.pdf> (accessed September 28, 2013) and *Digital Britain Final Report*, Department for Culture, Media and Sport, June, 2009, <http://www.official-documents.gov.uk/document/cm76/7650/7650.pdf> (accessed September 28, 2013).

3. E.g. Her Majesty's Government United Kingdom (HM Government), *Consultation on Proposals to Change the UK's Copyright System* (Intellectual Property Office, December, 2011); Hargreaves, *Digital Opportunity: A Review of Intellectual Property and Growth*; Strategic Advisory Board for Intellectual Property, *Strategic Priorities for Copyright* (Intellectual Property Office, March, 2009); Department for Culture, Media and Sport, *Creative Britain: New Talents for the New Economy* (February, 2008); Andrew Gowers, *Gowers Review of Intellectual Property* (HMSO, December, 2006); For the discussion in the European Union see Commission of the European Communities, *Green Paper on the Online Distribution of Audiovisual Works in the European Union* (COM(2011) 427 final, July, 2011); Commission of the European Communities, *Communication on Copyright in the Knowledge Economy* (COM(2009) 532 final, October, 2009); Commission of the European Communities, *Green Paper on Copyright in the Knowledge Economy* (COM(2008) 466/3, July, 2008); see also, "CRE-

ATe (Creativity, Regulation, Enterprise and Technology)" available at <http://www.create.ac.uk> (accessed April 21, 2012).

4. For a summary of some of these opportunities see chapter 1 in: Michael Geist, *Our own Creative Land: Cultural Monopoly & the Trouble with Copyright* (Toronto: Hart House, 2006).

5. Being qualitative in nature, the study was exploratory rather than statistical and gap finding was one aspect of it. The findings from the study were not designed to be used for drawing general inferences for all types of activities covered by copyright nor taken to be applicable to all types of artists. Indeed, even within the specific art practices included in the study, it cannot be said that there is always one artist 'voice.'

6. Grounded theory originated in the works of Barney Glaser and Anselm Strauss and involves an inductive process where theory is "derived from data, systematically gathered and analyzed through the research process" and "in this method, data collection, analysis, and eventual theory stand in close relationship to one another."

Anselm L. Strauss and Juliet M. Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (London: Sage Publications, 1998), 12.

See also, Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago: Aldine Publishing, 1967); Barney G. Glaser, *Theoretical Sensitivity: Advances in the Methodology of Grounded Theory* (California: Sociology Press, 1978).

7. Coding is a key process is use of grounded theory where "data are broken down into component parts, which are given names." Alan Bryman, *Social Research Methods*, (Oxford: Oxford University Press, 2008), 542. See also, Graham R. Gibbs, *Analysing Qualitative Data* (London: Sage, 2007); Matthew B. Miles and Michael A. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (London: Sage, 1994); Lyn Richards, *Handling Qualitative Data a Practical Guide* (London: Sage, 2006).

8. Christiane Paul, *Digital Art* (London: Thames & Hudson, 2003), 7.

9. William Vaughan, "Introduction: Digital Art History?," in *Digital Art History: A Subject in Transition*, eds. Anna Bentkowska-Kafel, Trish Cashen and Hazel Gardiner, vol. 1 (Bristol: Intellect, 2005), 1.

10. The term 'digital art' as an 'umbrella term' is somewhat problematic in that creators producing works may not routinely define themselves as only digital artists. Consequently, the term 'digital artist' is used here only as a con-

venient shorthand, with the understanding that it is a problematic term as also found in the study where although some of the interviewees had described themselves as 'digital artist' in their web presence, others had used different formulations like multimedia artist, electronic artist, new media artist, contemporary artist working with digital technologies and so on.

11. Also known by labels such as hypertext writing, new media writing and electronic writing. See: Chris Joseph, "State of the Art," March 2005, <http://tracearchive.ntu.ac.uk/Process/index.cfm?article=131> (accessed April 21, 2012).

12. See: Rachel Greene, *Internet Art* (London: Thames & Hudson, 2004): 31-32.

13. See: Paul, *Digital Art*, 124.

14. See Steve Dixon, *Digital Performance: A History of New Media in Theater, Dance, Performance Art, and Installation* (Cambridge, MA: MIT Press, 2007) 3, 512; see also, Johannes Birringer, *Performance, Technology, and Science* (New York: PAJ Publications, 2008).

15. The term is used here to mean those artists who have been 'native speakers' of the digital language from the start of their creative practice. Where the term is used for students who grew up in the digital world and are native speakers of the digital language. Marc Prensky, "Digital Natives, Digital Immigrants," in *On the Horizon* 9, no.5 (2001): 1.

16. The term is used here to mean those artists who did not start their art practice with digital technologies but have adopted it subsequently; where the term is used to describe those educators who were not born into the digital world but have adopted aspects of new technologies. Prensky, "Digital Natives, Digital Immigrants," 1.

17. Based on exhibition, display or making available to public of art works as reflected in their bios or curriculum vitas made available on their website or through the interview.

18. These interviewee numbers will be used when quoting from the interviews and such quotations remain direct transcriptions except for changes made for clarity and to maintain anonymity of interviewees.

19. See: Paul, *Digital Art*, 8.

20. "The concept legal consciousness is used to name analytically the understandings and meanings of law circulating in social relations. Legal consciousness refers to what people do as well as say about law ... the study of legal consciousness traces the ways in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law and legal meanings." Susan Silbey, "Legal Consciousness," in *New Oxford Companion to Law*

(Oxford: Oxford University Press, 2008); see also, Dave Cowan, "Legal Consciousness: Some Observations," in *Modern Law Review* 67, no.6 (2004): 928.

21. Value based on relationship rather than possession, John Perry Barlow, "The Economy of Ideas," *Wired*, 2.03, March 1994, <http://www.wired.com/wired/archive/2.03/economy-my.ideas.html> (accessed September 28, 2013).

22. Giving away a work may raise and as such making people familiar with it may raise demand for it. John Perry Barlow, "The Economy of Ideas," in *Wired*, 2.03, March 1994, <http://www.wired.com/wired/archive/2.03/economy.ideas.html> (accessed September 28, 2013).

23. When the IP protection derives from the artist being the only source of it. See: Barlow, "The Economy of Ideas."

24. The value of the artists' brand image has been noted. See: Celia Lury, "Portrait of the Artist as a Brand," in *Dear Images: Art, Copyright and Culture*, eds. Daniel McClean and Karsten Schubert (London: Ridinghouse, 2002), who uses Damien Hirst's works as an example, to argue that trademark protection is more appropriate in such cases of contemporary artworks.

25. Stephen Wilson, *Information Arts: Intersections of Art, Science, and Technology*, (Cambridge, MA: MIT Press, 2002), xxiii; and see: Paul, *Digital Art*, 7.

26. For a collection of essays, covering many disciplinary approaches, on the limits to copyright protection of analogue works of contemporary art and the potential restrictions imposed by such protection on contemporary art practices, see: Daniel McClean and Karsten Schubert, eds., *Dear Images: Art, Copyright and Culture*, (London: Ridinghouse, 2002).

27. Department for Business Innovation & Skills, (c) *the Way Ahead*, 7 [own emphasis added].



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